PROVISIONAL
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CERD/C/SR.947
9 September 1992

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

PROVISIONAL SUMMARY RECORD OF THE 947th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 7 August 1992, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

later: Mrs. SADIQ ALI
later: Mr. AHMADU

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GE.92-17045/4873B (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Ninth and tenth periodic reports of Austria (CERD/C/209/Add.3, HRI/CORE/1/Add.8)

At the invitation of the Chairman, Mr. Berchtold (Austria) took a place at the Committee table.

1. Mr. BERCHTOLD (Austria) said his country's report on implementation of the Convention was fairly short, because Austria had devoted most of its attention to preparing the core document (HRI/CORE/1/Add.8) and a report on the question of ethnic groups. Concerning the core document, he drew attention to an error in the second line of paragraph 3, where "square metre" should in fact read "square kilometre". He hoped that members of the Committee had received the annexes referred to in the document. Lastly, he pointed out that the Law of 27 October 1862 for the protection of personal liberty, referred to in paragraph 45, had been replaced by a new law, which had entered into force on 1 January 1991.

2. Mr. BANTON, country rapporteur for Austria, said that the notes which had been circulated to members of the Committee with his comments and questions included a list of questions which had been asked in the course of consideration of previous reports, which Austria did not appear to have answered in full.

3. He asked what measures the Austrian Government was taking to ensure coordination of its policy for implementation of the Convention. In regard to effective remedies (art. 6 of the Convention), and in particular to methods of evaluating the effectiveness of available remedies in cases of racial discrimination, he quoted an example of United Kingdom legislation on robbery and burglary to show that the effectiveness of remedies should be evaluated from the viewpoint of the individuals to be protected. He would appreciate the views of the representative of Austria on that point.

4. Referring to the disquieting results of the opinion survey conducted by the Austrian Gallup Institute in 1991 on anti-Semitism in Austria, he asked whether that country recognized anti-Semitism as a danger, and whether there were any plans to adopt measures, notably in the field of education, to combat

prejudices which might lead to acts of discrimination. In regard to xenophobia, the considerable pressure currently exerted on Austria by the flood of asylum seekers and refugees should be taken into account.

5. Concerning the core document (HRI/CORE/1/Add.8), he referred to article 1 of Austria's Federal Constitutional Law of 1973, which prohibited any discrimination on the sole ground of race, colour, descent or national or ethnic origin. He would like to know whether the same restrictions applied in Austria to other prohibitions in regard to racial discrimination. Had there been any cases in which Austrian courts had distinguished between unlawful and lawful grounds for discrimination? The distinction between racial grounds proper and sexual, commercial or even political grounds was often difficult to establish. It was of interest to note certain recent amendments to Australian legislation in that connection: previously, to be deemed unlawful, an act of discrimination had to be shown to have a dominantly racial motive, whereas today only one of the motives needed to be racial for the action to be deemed unlawful. If the Austrian Government, for its part, was restricting the use of remedies in regard to racial discrimination to acts which could be shown to have been motivated solely by racial hostility, it was considerably weakening the scope of the Convention.

6. Mr. DIACONU said the experience of a country such as Austria, which was now in many respects the hub of Europe, was of considerable interest. However, it was regrettable that the report under consideration was so short, and difficult to read in so far as it referred back to various earlier reports.

7. A number of points called for clarification. First, in the light of the proliferation in Austria - as in other European countries - of associations advocating xenophobic if not racist attitudes, it would be interesting to know whether any measures directly penalizing such associations were being contemplated. The legal measures listed in the eighth periodic report (1987) did not appear to be adequate in that respect; however, perhaps the situation had changed? What measures had been taken to prevent unduly discriminatory treatment of immigrants? Had there been any demands on the part of minorities for the setting up of universities, or university departments, where instruction would be provided in their mother tongue? Lastly, what remedies were available to Austrian citizens in cases of racial discrimination? The core document seemed to imply that administrative decisions could only be challenged before two courts situated in Vienna. Was that in fact the case?

8. Mr. WOLFRUM, after expressing his thanks to the Austrian Government for having taken in so many refugees from the former Yugoslavia, pointed out, with reference to paragraph 55 of the core document, that in the light of the importance of the question of the treatment of certain minority groups, a mere reference back to other texts was somewhat inadequate.

9. In that connection, he would like to have further details on two questions which had not been dealt with in previous reports. First, he would be grateful if the representative of Austria could provide clarifications on a judgement of the Constitutional Court, dated 15 December 1989, which had declared unconstitutional article 2, paragraph 10, of the Act relating to the education of minorities in Carinthia and declaring other provisions of that Act null and void, while affirming that article 7, paragraph 2, of the 1955 Treaty of Vienna had priority in that respect. Secondly, he would like details on the implementation of another decision by the Constitutional Court, dated 1987, under which Croat had been accepted as a second language in the municipalities and districts of Burgenland and Carinthia where Croats lived.

10. He would also like further information concerning political representation of the Slovenes and Croats in the two regions to which he had referred, and whether they were able to form political parties. Was the Hungarian language accepted in Burgenland? Was the Croat used in the region the one spoken by Croats who lived there, or the Croat spoken in Croatia?

11. Mr. de GOUTTES thanked the representative of Austria for having made a special trip from Vienna to attend the Committee's meeting. He too considered that the report was of special interest in view of the role played by Austria in the defence of human rights. Since it had already recognized the system of individual petitions, the country should have no difficulties in making the declaration provided for under article 14 of the Convention.

12. With regard to the report itself, he would like to know, first, whether the fact that it had so far proved unnecessary in Austria to take measures under article 2, paragraphs 1 (d) and (e) (para. 5 of the report), meant that there had been no racial discrimination within the meaning of those paragraphs; and, secondly, whether the Convention was directly applicable in Austrian domestic law and could be directly invoked before the courts. He hoped that Austria's next report would supply full information on the situation of refugees, notably those coming from central and eastern Europe,

and on the existence of groups with racist or xenophobic views, as well as statistics on complaints lodged, proceedings instituted and sentences handed down for acts of racism.

13. Mr. van BOVEN regretted that the report submitted did not contain more information. The battle against racial discrimination was not something static: it was a combination of trends, developments and policies on which it would have been desirable to have further details. More information and more examples would also have been useful in regard to xenophobic tendencies and outbreaks of anti-Semitism in Austria. It was surprising that the elimination of racial discrimination should be viewed as a purely legal matter, in view of the fact that the Convention made clear that legislation was only one of the measures that could be adopted for that purpose. Lastly, it would be a commendable initiative for Austria to make the declaration provided for under article 14 of the Convention.

14. Mrs. Sadiq Ali took the Chair.

15. Mr. BERCHTOLD (Austria), replying first to comments concerning the Austrian report (CERD/C/209/Add.3), which he himself had prepared, pointed out that the drafting had caused him some problems. In fact, he had been responsible for drafting Austria's reports to the Committee for many years, and he had wondered whether he should repeat information that he had already communicated previously. Accordingly, he would appreciate it if members of the Committee could indicate in their concluding observations whether they wanted a comprehensive report, or simply an updating of earlier reports.

16. On the question of minorities, he pointed out that different ethnic groups existed in Austria, all of them in very different situations. Czechs who lived in Vienna had their own school, where children could learn Czech, as well as their own cultural association, but they were very well integrated into the rest of the population. The Croat minority that lived in Burgenland was divided into two groups, one made up of those who believed that they should preserve their cultural identity, and the other of those who considered that they should integrate into the rest of the population and thus benefit from a higher standard of living. Accordingly, it had not been possible to set up an advisory council. Hungarians were also to be found in Burgenland. They formed a very small community, which had proved highly cooperative.

They had sent representatives to the advisory council, and received subsidies and other forms of assistance. It was the Slovene minority living in Carinthia that caused the most difficulties.

17. Generally speaking, problems concerning minorities dated back to the aftermath of the First World War, when a new State (Bundesland) incorporating Serbs, Croats and Slovenes had been created. The Slovenes had invaded and occupied southern Carinthia, on the grounds that there was a Slovene majority in the region. A referendum had been held in October 1920 and the population had opted, by a slender majority, to remain part of Austria. After the Second World War, the territory had again been occupied by the Slovenes, but in the end had remained part of Austria. It was understandable, therefore, that relations between the Slovenes and German-speaking Austrians were not always very amicable, and that the latter did not always look favourably on measures taken to benefit the Slovene minority. The Austrian Government had nevertheless fulfilled its responsibilities, and the Slovenes had their own schools, where children received bilingual instruction. The Constitutional Court had taken decisions in their favour, obliging the legislature to amend laws as a result. It should be noted that the Church played an important role in that regard, since many of the members of the clergy were Slovenes. In addition, minorities of whatever kind were free to form their own political parties, although those parties were too small and did not receive enough votes to be represented in the national parliament. There had recently been some idea of reserving a few seats in parliament for minorities, independently of the election results, but since the idea had not received unanimous support, nothing had yet been decided.

18. He shared Mr. van Boven's view that legislation was not sufficient to combat racial discrimination, and that other measures were needed. In Austria, children learned tolerance at school, and young people, as part of their higher education, could obtain scholarships to travel abroad, meet other students, and become acquainted with other cultures. Numerous measures were thus taken to encourage better knowledge of others and to promote tolerance.

19. Concerning the problem of xenophobia, he pointed out that what Austrians most feared was that foreigners arriving in Austria might take away their jobs. As for refugees, Austrians were willing to welcome and assist them, and had no xenophobic feelings towards them.

20. Concerning anti-Semitism, the danger came solely from organized anti-Semitic groups or movements, not from individuals, whose attitudes in regard to Jews were a matter entirely for themselves.

21. Regarding the incorporation of the Convention into domestic law, he said that a federal constitutional law prohibited any discrimination on grounds of race, colour, descent, or national or ethnic origin, and in that connection drew the attention of members of the Committee to paragraph 57 of the core document (HRI/CORE/1/Add.8). On the matter of the wording of paragraph 5 of the report under consideration (CERD/C/209/Add.3), he explained that the problem lay in an unfortunate choice of words; in fact, he had intended to say that he had already given information in earlier reports on measures taken to give effect to article 2, paragraphs 1 (d) and (e), of the Convention, and did not want to repeat them.

22. In regard to racist organizations, he stated that the re-establishment of the Nazi Party was prohibited, and that any activity aiming to revive it would constitute an offence punishable by law. In addition, any organization based on Nazi ideas could not exist in law.

23. Concerning remedies, and more specifically the comment by Mr. Diaconu to the effect that the two existing administrative courts were inadequate, he pointed out that the function of those courts was to monitor the legality of actions of the administration, and up to now they had never had to deal with complaints regarding acts of discrimination committed by the administration. Recently, however, the first case in which the constitutional law on elimination of racial discrimination might be applicable had come before the Constitutional Court, although there was so far nothing to indicate with any certainty that a case of racial discrimination was involved.

24. In regard to the list of questions submitted by Mr. Banton, he said that according to a census carried out in 1981, the population of Austria at that time had been 7,263,890. In July 1992, that had been 286,607 immigrant workers, of whom 139,176 were Yugoslavs, 57,794 Turks, 13,678 Germans and some 10,000 Poles, Hungarians, Romanians and Czechs. He did not have the necessary figures to enable him to compare the unemployment rates of immigrants and nationals, or to estimate how many foreign workers had returned to their country of origin or had acquired Austrian nationality. Aliens coming to work in Austria were granted a two-year work permit, which was extended if they had worked for a certain length of time in the course of

those two years. After having lived for eight years in Austria and worked for five years during that period, immigrants could obtain a permanent work permit. Such permits were valid only in one State. With reference to the question concerning employment of immigrants in agriculture, he pointed out that there were no longer any large landowners in Austria, and that farms were not big enough to recruit immigrant workers. On a further point, if a foreign man or woman married to an Austrian should become divorced, that person would retain Austrian nationality if he or she had acquired it.

25. Concerning the educational problems of Yugoslav children, it was difficult to say whether or not such problems were due to language, since in general children of foreign mother tongue received special teaching in their own language.

26. In regard to questions concerning the Mediation Service, he would like to clear up a few misunderstandings. The purpose of the Mediation Service was to resolve problems of an administrative nature and to provide information and explanations on relevant administrative procedures. It was not concerned with legal questions, and did not give rulings on payment of compensation. It was not competent to challenge judicial decisions, and could only refer a verdict it considered unjust to the Constitutional Court with a request that it should be set aside. Mediators received a salary of 107,000 schillings (the average working wage being 20,000 schillings), a salary equivalent to that of a Secretary of State. That salary was subject to an increase every two years, like that of Government officials. Migrant workers had access to the Mediation Service, and there was no time-limit for applying. In 1991, 4,783 complaints had been lodged, as against 5,675 in 1990. The Mediation Service had declared itself competent in 80 per cent of cases. Tyrol and Vorarlberg had not recognized the competence of the national Mediation Service, and had preferred to set up their own service.

27. On the matter of monitoring the effectiveness of remedies, he said that the Austrian Government did not conduct periodic surveys to determine whether residents had been the victims of particular offences or acts of discrimination, such as, for example, those carried out by the British Government in England and Wales. That system seemed to him an interesting one, and he wondered whether the Committee should not study the question of remedies and propose a solution to States parties in its concluding observations or in the form of a recommendation.

28. The question on the scope of article 1, paragraph 2, of the Convention seemed to imply that the Convention did not apply only to States, but also to relations between individuals. That was an entirely new concept, which in his view was not in keeping with the spirit of the Convention.

29. With reference to the Federal Constitutional Law of 3 July 1973, under which the Executive was required to refrain from discrimination on the sole ground of race, colour, descent or national or ethnic origin, he wondered exactly what was meant by the term "discrimination". Did it imply different treatment, or unjustified treatment? If the latter were the case, the restriction contained in the law would indeed be open to criticism. He pointed out, however, that there did exist positive forms of discrimination, such as exemption from military service, as well as justified and non-discriminatory forms of different treatment applied to aliens, such as requests for visas.

30. Mr. Banton had made reference to Australian legislation the effect of which was to reverse the burden of proof; in his view, such a measure would only be justified in very specific cases, since if the right to a remedy was automatic, anyone could allege that he had been a victim of racial discrimination and it would then be for the accused party to prove the contrary. In fact, it was normal practice for every complainant to take responsibility for his allegations, and it was only in very rare instances that derogation from that principle might appear justified. In cases of that kind, there was a danger that reversal of the burden of proof might lead to abuses. For example, it might happen that when there were four applicants for a post and only one was chosen, the others might claim that they had been rejected for reasons connected with their race, and might sue the employer for damages: how was the latter to prove that nothing of the kind had occurred? It would seem most unwise to put an employer in such a position.

31. Mr. ABOUL-NASR, referring to the question raised by Mr. Berchtold as to whether there was a need to repeat in each report basic information already provided earlier, said that when the Convention was consulted on that point it would appear that States parties were expected to submit a full initial report, and later periodic reports in which, without repeating information initially supplied, they would give details of any new developments that had occurred in the period under consideration and would reply to questions by the Committee. The latter did not wish to have before it voluminous documents

which it would have to search through to find the relevant material, since the Secretariat prepared a complete dossier for every member containing the previous reports of the country concerned as well as the summary records of the meetings at which they had been considered. Accordingly, when preparing its report, the country should confine itself to any new developments and problems encountered during the period under consideration, if necessary making reference to earlier documents.

32. He noted that there was a tendency to employ the term "anti-Semitism" in the sense of discrimination against Jews, whereas in fact Arabs were also Semites, and the term should be understood as implying discrimination against both alike.

33. Lastly, Austria was greatly concerned at the events which were currently taking place in its neighbouring country, the former Yugoslavia, and was playing a very active role, notably in the Security Council. Since it was particularly well placed to assess the scale of the problem, would Austria be prepared to invoke article 11 of the Convention and bring that very serious matter to the attention of the Committee?

34. Mr. WOLFRUM associated himself with the question just raised by Mr. Aboul-Nasr concerning implementation of article 11 of the Convention. He thanked Mr. Berchtold for his oral statement, which was a welcome supplement to an over-brief report. In that connection, mention had been made of the existence of a document on minorities in Austria, and he would like that document to be circulated to members of the Committee.

35. Mr. BANTON said he was satisfied with the replies given by Mr. Berchtold, except on the following points: first, article 5 (e) (i) of the Convention guaranteed everyone full equality before the law in regard to the right to work. However, the survey conducted by the Austrian Gallup Institute in 1991 had revealed - as had already been pointed out - some disquieting figures with regard to anti-Semitism in Austria. It was not enough to offer an evasive reply, to the effect that the Convention did not make it obligatory for everyone to like Jews. In that context, and concerning effective implementation of article 6 of the Convention, the fact that Austrian legislation afforded all the protection that was needed, and provided for remedies, did not necessarily mean that victims of racial discrimination obtained effective compensation in practice. The survey carried out in the United Kingdom on the effectiveness of the protection offered by the

law was significant in that connection, because it had shown that very often, and for all kinds of reasons, victims did not bring cases to court, and that accordingly much remained to be done to improve the effectiveness of the law.

36. Lastly, he hoped that the representative of Austria would give more thought to the question of reversal of the burden of proof. The fears voiced by Mr. Berchtold were certainly exaggerated, and were perhaps more specifically concerned with criminal proceedings. The problem did not arise in the same way in civil cases; in any event, Austria should take note of what was done in that regard in other countries, where efforts were made to put the parties on a genuinely equal footing before the law.

37. Mr. FERRERO COSTA noted with satisfaction that it had been possible to engage in a fruitful dialogue with the representative of Austria despite an over-brief report, and associated himself with what had been said by Mr. Aboul-Nasr in regard to the content of periodic reports. The latter were in fact expected every two years, and not every four or six years as some countries seemed to believe; in the case of delay in submission of a report, obviously that report should be made fuller, and should provide all the necessary information on any events of a political, jurisprudential or practical nature that had occurred at any time in the period under consideration. Reports submitted to the Committee concerned human societies, which were by nature dynamic, and they should be neither static nor repetitive. Lastly, they should be drafted in conformity with the specific guidelines that had been provided by the Committee.

38. Mr. van BOVEN thanked the representative of Austria for the detailed information given to the Committee; he would nevertheless point out that both he himself and Mr. de Gouttes had raised a question concerning the declaration provided for under article 14 of the Convention. Of course, Mr. Berchtold was not being asked to reply immediately, but it would be useful to know whether the problem was to be brought up again with his Government and whether it was to be dealt with in the next report.

39. He fully understood that Austria should take a cautious line concerning reversal of the burden of proof. However, as had been pointed out by Mr. Banton, the problem did not arise in the same way where a civil case was concerned. The Supreme Court of the Netherlands had taken some significant decisions in that connection, notably regarding housing, when all the indications were that there had been discrimination; there had been one case,

in particular, where after statistics had shown - though without it being possible to provide any real proof - that discriminatory practices existed in housing allocation policy, it had been decided that it should be for housing programme officials to provide proof of absence of discrimination.

40. Mr. GARVALOV said he had listened with particular interest to the replies of a country that was in many respects close to his own. He noted with some concern that not a single case of racial discrimination had ever been brought before the Austrian courts. That could be explained in two ways: either there was no racial discrimination in the country (which was unfortunately unlikely, in today's world), or else victims of discriminatory practices hesitated for various reasons to lay the matter before a court - or were even afraid to do so.

41. The Austrian authorities had had to face a disquieting situation as a result of the influx of immigrants from neighbouring countries, together with all the problems which that influx involved: the right of the receiving country to control immigration, its duty not to carry out the reception procedure in a discriminatory fashion, etc. The problem was particularly delicate at the present time and in that region of the world. In that connection, he remembered having heard an eminent representative of Austria on the Commission on Human Rights suggest that the time had come to consider drafting a convention on the rights of minorities. A proposal to that effect had been made to the Council of Europe, and he would like to know whether Austria, as a member of the Council, would consider adoption of such a convention desirable.

42. Lastly, the representative of Austria had stated that his Government had conferred autonomy on certain ethnic groups at the administrative level: he would like to know the precise scope of that autonomy.

43. Mr. BERCHTOLD (Austria) feared there had been some misunderstanding on that point: he had not spoken of the autonomy of minorities; rather, Austria, aware that a vast problem regarding ethnic minorities was now arising throughout Europe, considered that the convention on the matter contemplated by the Council of Europe might be useful.

44. Concerning possible application by Austria of article 11 of the Convention in regard to the events that were currently tearing the former Yugoslavia apart, he would put the question to his Government; he would also raise the matter of the optional declaration provided for under article 14 of

the Convention. As to reversal of the burden of proof, that question was a very delicate one, which would require lengthy debate. In conclusion, he assured the Committee that no one in Austria need have anything to fear in bringing a case of racial discrimination before the courts.

45. Mr. Berchtold (Austria) withdrew.

46. Mr. Ahmadu took the Chair.

Ninth and tenth periodic reports of Chile (CERD/C/196/Add.1) (continued)

47. At the invitation of the Chairman, Mr. Bengoa and Mr. Oyarce (Chile) took places at the Committee table.

48. Mr. SONG Shuhua noted that compared with previous reports the current report by the Government of Chile was quite remarkable, in that it recognized with great frankness the serious discrimination from which the indigenous populations of Chile were still suffering: those populations were deprived of their rights even to such essentials to life as land and water. The commendable attitude of the present authorities marked an entirely new phase, which raised hopes of a full and unequivocal implementation of the Convention.

49. It emerged from the report under consideration that the communal system of land ownership in use among the indigenous peoples had been dismantled in the course of centuries, and that the land problem had still not been resolved where they were concerned. In the light of past history and current reality, how did the Chilean Government plan to find concrete solutions to such basic problems as land distribution, access to water resources and communal ownership?

50. Mr. FERRERO COSTA said he had taken note with great satisfaction of a report which gave evidence of far-reaching changes currently taking place in Chile. Having closely followed developments all through the transition period the country had experienced, he believed Chile had embarked on a highly innovative policy as compared to other Latin American countries on the question of indigenous populations. The report provided an in-depth analysis of the subject, whereas previous reports had barely referred to it. The document was highly satisfactory on two counts: first, it provided the Committee with a great deal of basic data not previously available to it; and, secondly, it admitted in all frankness that racial discrimination did exist in regard to indigenous peoples in Chile. As Mrs. Sadiq Ali had pointed out, that was an excellent starting-point for tackling the task of eliminating all discriminatory practices. The problem now was how the Government would set

about that task, and the questions that had been raised were extremely interesting; he hoped that the Chilean delegation would be able to reply to them. Where preparation of the next report was concerned, Chile would need to follow the guidelines given by the Committee. That had not been the case with the current report, which was quite understandable in view of the circumstances. It would be particularly interesting to have details of any legislative and constitutional amendments introduced to enable the country to move from dictatorship to democracy.

51. The Committee needed more exact information on four questions in particular: first, the economic situation; secondly, the legislation adopted in regard to indigenous populations, notably the population which had been involved in the dispute referred to in paragraph 56 of the report; thirdly, relations between Chile and South Africa in the commercial and diplomatic fields, among others; and, fourthly, any manifestations of racial discrimination which could affect the rest of the population, in addition to the indigenous peoples. Where the latter aspect was concerned, he believed that there were perhaps fewer such problems in Chile than in other Latin American countries, because its population was more homogeneous. Nevertheless, the Committee ought to be given a clearer picture of the situation. Lastly, he expressed the hope that the new democratic Government would soon make the declaration provided for under article 14 of the Convention.

52. Mr. de GOUTTES said he too was pleased to note the results of Chile's return to democracy, results which had also been beneficial in regard to the combating of racial discrimination. He appreciated the frankness shown in the report (CERD/C/196/Add.1), and the useful historical outline given in chapter I. That chapter showed that, in the past, Chile had veered between a policy of forced assimilation and a policy of differentiation which kept the indigenous populations confined to their own lands. On the other hand, he found chapter III somewhat unsatisfactory. The account of how the various articles of the Convention were implemented was too brief, and contained too many omissions. Subsequent reports should provide more details on texts penalizing acts of racism, on corresponding remedies before the courts, and on the situation of minorities other than indigenous peoples, notably aliens, blacks, and peasant communities.

53. Mr. van BOVEN found the plentiful information given in the report (CERD/C/196/Add.1) regarding indigenous populations all the more interesting in that under the previous regime he had noted that although a number of political groups (Communists, Socialists, Social Democrats, Christian Democrats, etc.) had succeeded in sending information abroad and in obtaining support there, that had not been the case for the indigenous populations. The situation of such populations had still been too little known. The Committee should be grateful to the new Chilean Government for describing the situation frankly in its report, notably in the useful historical outline.

54. He asked whether the bill on the protection, advancement and development of the indigenous peoples described in paragraph 65 et seq. had already been adopted. Like Mrs. Sadiq Ali, he noted a discrepancy between the figures concerning indigenous populations provided in paragraphs 58 and 65 of the report; when the figures given in the former were added up, they did not produce the total figure of 1 million indicated in the latter. Concerning paragraph 67 (o) of the report, which stated that the opinions of indigenous organizations had to be taken into account in matters related to indigenous questions, he pointed out that ILO Convention No. 169 not only made it obligatory to consult indigenous peoples, but also required their consent in matters of concern to them; it would be useful to know how far the Chilean Government went in that regard.

55. Lastly, he too expressed the hope that the new democratic Government would make the declaration provided for in article 14 (1) of the Convention, which would enable procedures designed to eliminate racial discrimination to be strengthened.

56. Mr. YUTZIS said he found it particularly interesting that the report of Chile should have presented a detailed historical outline of the evolution of its indigenous populations in the year of the five-hundredth anniversary of the European presence on the American continent. Unfortunately, that outline revealed a long history of oppression.

57. The report also mentioned proposed constitutional reforms and various bills concerning the indigenous populations, which it was to be hoped would be adopted as quickly as possible. In that connection, he pointed out that in addition to the information provided in the report, he had heard accounts of often violent land disputes between indigenous inhabitants and owners of lands

which had once been indigenous, but which had been handed over to colonists at some time in the past. He welcomed the fact that the State, as had been pointed out by the Chilean delegation, had taken steps to purchase an estate subsequently handed over to the indigenous peoples in the south of the country, which indicated a commendable political will on its part. Easter Island had also experienced disputes, which were referred to in paragraph 56 of the report. The Committee should be kept informed of any developments in that situation, and also of the progress of the civil writ which had been entered and was now before the courts. Lastly, he hoped that information would be provided concerning action taken against racist propaganda and racist organizations, in accordance with article 4 of the Convention.

58. Mr. SHAHI also welcomed the historical outline given in the report under consideration, and the evidence it contained of the Government's willingness to remedy the abuses in question. The new democratic Government had fortunately overturned the policy of the Pinochet regime which had been opposed to indigenous traditions and languages. Like other members of the Committee, he would like to draw attention to the statistical discrepancy between paragraphs 58 and 65 of the report where indigenous populations were concerned. Regarding paragraph 67, he would be glad to have details concerning the representation of indigenous people at national level, representation which should be of considerable proportions if there were 1 million Chileans belonging to ethnic groups out of a total population of some 13 million.

59. The CHAIRMAN said the Chilean delegation would reply to the questions raised by members of the Committee at its 948th meeting, on the morning of Monday, 10 August.

ORGANIZATION OF WORK

60. The CHAIRMAN read out a letter dated 7 August 1992 in which the Permanent Mission of the Somali Democratic Republic in Geneva requested that, in view of the civil strife in the country and the period of transition it was now undergoing, consideration of the report of Somalia, scheduled to take place at the current session, should be postponed until the following session. The Permanent Mission stated that the Somali Government would submit its report to the Committee as soon as the situation had returned to normal.

61. He had also received a letter from the Permanent Mission of Zambia to the United Nations Office at Geneva, dated 4 August 1992, stating that it was not in a position to prepare a comprehensive report for the current session, and asking to be given an extra month to complete it.

62. Mr. BANTON said that if consideration of the report of Somalia was to be deferred, a date should be set for it, in order to avoid any difference in treatment from other countries.

63. Mr. YUTZIS supported that request.

64. Mr. SHAHI pointed out that in the past the Committee had indeed set a date when it had decided to postpone consideration of a report. In the case of Somalia, however, it should be borne in mind that the situation was an abnormal one, in which the Committee could not even be certain that, if it made comments, any authority in the country would be able to take cognizance of them.

65. Mr. AHMADU expressed the view that the Committee should wait until the situation in Somalia improved before setting a date.

66. Following a discussion in which Mr. GARVALOV, Mr. BANTON, Mr. WOLFRUM and Mr. FERRERO COSTA took part, the CHAIRMAN proposed that the Committee should decide not to take up the report of Somalia at the current session, and to grant the request by the Permanent Mission of Zambia.

67. It was so decided.

68. In reply to a request for clarification from Mr. DIACONU, Mr. TIKHONOV (Secretary of the Committee) stated that at the current session the Committee would be called upon to prepare comments for submission to the General Assembly on draft model legislation for combating racial discrimination which the Secretariat had prepared; that draft should be a fairly short text, of two or three pages.

The meeting rose at 6.10 p.m.

(98)

PROVISIONAL
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CERD/C/SR.948
13 August 1992

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

PROVISIONAL SUMMARY RECORD OF THE 948th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 August 1992, at 10 a.m.

Chairman: Mr. DIACONU

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GE.92-17049/4775B (E)

The meeting was called to order at 10.10 a.m.

ORGANIZATION OF WORK

Mrs. KLEIN-BIDMON (Centre for Human Rights) informed the Committee that the Chairman, Mr. Valencia Rodriguez, had unfortunately been taken ill and was in hospital. Mr. Diaconu would therefore take the Chair at the present meeting.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Ninth and tenth periodic reports of Chile (CERD/C/196/Add.1) (continued)

At the invitation of the Chairman, Mr. Bengoa, Mr. Ivlic, Mr. Llanos and Mr. Oyarce (Chile) took places at the Committee table.

Mr. BENGOA (Chile) thanked members of the Committee for their positive comments both on the tenth report, which was combined with the ninth, and on the political situation in his country. As Mr. van Boven had pointed out, the people of Chile had cause to be grateful to international organizations for what they had done to help restore democracy. His delegation would transmit to the President the view expressed by a number of members - a view with which he fully concurred - that Chile should make the declaration provided for under article 14 of the Convention as soon as possible as a further stage in the democratization process.

As an illustration of how indigenous peoples in Chile suffered from discrimination, he quoted from a newspaper report stating that 63 applications for changes of name had been published in one issue of the Official Bulletin. The changes had been applied for on the ground that indigenous names were a barrier to obtaining employment. Discrimination was a complex phenomenon in Chile and was as yet not governed by legislation, although the Government was making efforts to combat it. It would be a sign that those efforts were succeeding if in a few years' time applications for changes of name had decreased.

Members of the Committee had asked whether other minorities in the country suffered from discrimination. There were practically no groups which were discriminated against on purely ethnic or racial grounds. Neither colonies of Europeans nor immigrant groups suffered from such treatment, nor did the small black population. There was a long-standing tradition in Chile of welcoming immigrants, who were regarded as enriching Chilean society and were accordingly rapidly assimilated.

Several speakers had expressed concern about the political situation in Chile. After 18 years of military government, democracy had been restored, not by revolution but by a peaceful and orderly process of negotiation. In reply to Mrs. Sadiq Ali, he said that the Constitution of 1980 had been amended following a plebiscite in 1989, and it was that amended Constitution that was now in force. The Commander-in-Chief of the Army, who could not be removed from his post, was still General Pinochet. Members of the Senate were elected, but many were still those appointed under the previous regime, and the same was true of members of the Supreme Court. A bill was now before Parliament which was to introduce far-reaching changes in the administration of justice. Among the important constitutional reforms adopted was one empowering the President to pardon political prisoners.

In reply to a question from Mr. Ferrero Costa, he said that the Mapuches were among the poorest sections of the population. A recent study had shown that, in terms of infant mortality, morbidity and illiteracy, they were below the national average. Because of the greater number of job opportunities in the cities, the rate of migration among Mapuches was high. The situation of the Aymara and Rapanui people was somewhat better, since although relatively poor, they possessed more resources.

On the question of the demographic composition of the population, it was difficult to obtain figures, and thus the report might contain some contradictions. Altogether, the indigenous population numbered approximately 1 million. In the population census taken on 2 April 1992, Chileans had for the first time been asked to state their ethnic origin. The results of that census would be available in a few months, and he would transmit them to the Committee.

Questions had been raised concerning the Yamanas, the Alacalufes, the Kawashkar and other minorities in the extreme south of the country. The four tribes that had previously inhabited that part of the country had been decimated following the invasion of colonizers from the mainland, and as a result only very small numbers of them remained. A year earlier, an organization had been set up in Punta Areñas for the benefit of some 50 young people of indigenous origin who had left their communities; two had been given scholarships to university and seven were following technical courses. It was hoped to build a centre in the region to develop a programme of activities for such people and to begin the process of re-identifying indigenous groups. The

draft Indigenous Peoples Act now before Parliament provided for the granting of special fishing rights, and rights over other resources, to indigenous peoples, and it was hoped that such measures would help to halt the process whereby they were gradually becoming extinct.

A number of questions had been raised concerning the territory of the Mapuches: it was true that many Mapuche organizations had opposed the parcelling out of communal land. Under the military regime, more than 60,000 land titles had been allocated with the result that 2,000 existing community holdings had been abolished. With the advent of democratic government in May 1990, those land allocations had been declared invalid, and consultations had been held with the various communities on how best to regulate the situation from the legal point of view. The bill currently under discussion provided for a combined system of individually owned and communally owned land. Generally speaking, land in the vicinity of dwellings and land used for horticulture would be private, whereas forests and pastures would be communal. It was proposed to set up an Indigenous Land and Water Fund, which would enable the communities to acquire further resources. In reply to Mr. van Boven, he said that the bill had been approved by the Chamber of Deputies, and he hoped it would become law in the course of the year. Its provisions ensured that Mapuche territory would be protected from potentially destructive commercial pressures, and it also provided for a speedy and effective land claims procedure, to be financed by the Government.

It was true that there had been serious problems in regard to land disputes, notably in Cantin, and other conflicts over the construction of hydroelectric and other projects, but there was hope that they would be resolved harmoniously, given the Government's firm political will to find solutions to such problems by peaceful means.

In reply to a further question from Mrs. Sadiq Ali, he said it was true that the northern part of the country was virtually a desert zone where water was a vital resource, and that indigenous communities had suffered from pressures by mining companies in that respect. In June 1992, an Act had been passed amending the Water Code to prohibit exploitation of water resources on which indigenous communities depended.

In Easter Island, the Act of 1966 restricting access to private property to inhabitants of the Island was still in force. The Easter Islanders had in fact entered a writ against the State on the matter in 1988, a writ which had

been suspended for two and a half years pending adoption of the new Indigenous Peoples Act now before Parliament. Recently, local elections had been held on the Island, and a new Chief of the Council of Elders had been elected. Discussions were now being held with the Council on the introduction of a new legal regime.

Participation of indigenous peoples in the country's poltical life would be regulated under the bill now before Parliament, which would also provide for judicial remedies in cases of discrimination. One significant measure under that bill would be the establishment of an Indigenous Development Corporation, half of whose members would be appointed by the Government, and half by indigenous groups. It was hoped that indigenous participation in public life at all levels would increase. He pointed out that, in keeping with the country's liberal traditions, there was no "quota" for elections to Parliament or for local elections: members were elected by universal suffrage, on their own merits, and not in the capacity of representatives of their particular indigenous group.

In reply to Mr. Ferrero Costa, he said that while relations with South Africa had been encouraged under the military regime, they had been played down under the new Government. Recently, however, a Chilean ambassador had been accredited to South Africa in recognition of that country's progress towards a united, multiracial and democratic regime. Chile had complied with all resolutions of the Security Council and the General Assembly in that regard. The Government's policy was to support all efforts to eliminate apartheid in South Africa.

Where discrimination against the rural and urban poor was concerned, it was true that severe poverty existed in many parts of the country, but it could not be said that the poor suffered from racial or ethnic discrimination in terms of article 1 of the Convention.

Mrs. Sadiq Ali had asked whether organized groups promoting racial discrimination existed in the country. Fortunately, he was not aware of any such groups. Frequent public discussions on the subject of discrimination were held on television and radio, and the Ministry of Education had launched a programme designed to increase public awareness of the issue.

Chile was emerging from a long period of human rights violations, and the Government was determined that such an era in its history should never be repeated. Its wish was to collaborate with the Committee, in the knowledge

that any form of discrimination anywhere in the world had its effects on all countries and on peoples everywhere. He assured members that Chile's next report would comply fully with the Committee's guidelines.

The CHAIRMAN thanked the representative of Chile for the full replies he had given to the Committee's questions.

Mr. van BOVEN said he, too, wished to thank the Chilean representative for his very extensive replies. He noted with satisfaction the latter's announcement that his Government would soon be making the declaration provided for under article 14 of the Convention.

Mr. Bengoa, Mr. Ivelic, Mr. Llanos and Mr. Oyarce (Chile) withdrew.

Initial report of Viet Nam (CERD/C/101/Add.5)

At the invitation of the Chairman, Mr. Nguyen Luong (Viet Nam) took a place at the Committee table.

Mr. NGUYEN LUONG (Viet Nam) said, in accordance with the instructions it had received, his delegation formally requested the Committee to defer consideration of the Vietnamese report until the next session, so as to enable the Government to produce an updated document in the light of current changes. He would welcome the Committee's advice and suggestions on the content of the forthcoming report.

Viet Nam, a multinational State, intended to pursue its policy of ensuring that all citizens had equal rights and duties; that included the ethnic nationalities, whose welfare and advancement were promoted in accordance with the Convention. Article 5 of the new Constitution of Viet Nam provided, inter alia, that the State of Viet Nam was the unitary State of all nationalities living together in its territory. It implemented a policy of equality, solidarity and mutual assistance among the nationalities, and all acts of discrimination and division between the nationalities were strictly prohibited. The ethnic nationalities had the right to use their own spoken and written language, to preserve their national identity and to practise and enjoy their own customs, traditions and cultures. The State pursued a policy of overall development in order to raise the standard of living and cultural level of the ethnic nationalities. Under a Council of Ministers' decision of February 1990, a special government office had been made responsible for the economic and social development of the ethnic nationalities and for political questions concerning them. It was in charge of the implementation of the

development plan for the highlands - the regions in which those communities lived - up to the year 2000. In articles 29, 35 and 36, the 1992 Constitution made special provision for education and human resources development in the regions inhabited by ethnic nationalities, while the Council of Ministers ensured that the relevant financial and budgetary measures were taken to guarantee the implementation of those provisions.

At the international level, the Government of Viet Nam undertook to continue to support the struggle of peoples against racial discrimination and segregation. He took the opportunity to submit to the Committee a statement made on 25 July 1992 by the spokeswoman of the Ministry of Foreign Affairs of Viet Nam on the recent massacre of two Vietnamese families in Cambodia. Public opinion considered the massacre to be inspired by racial hatred, and he hoped that the Committee would not let it go unnoticed.

The CHAIRMAN noted that the representative of Viet Nam had requested that consideration of its periodic report should be postponed until 1993, and that the delegation was now seeking the Committee's advice in preparing that report. He asked Committee members whether they wished to confine the discussion to comments and advice in response to that request.

Mr. de GOUTTES said that, as country rapporteur designated to make a preliminary study of the implementation of the Convention in Viet Nam, he welcomed the presence of the representative of Viet Nam and was willing to present the ad hoc report he had prepared on the basis of existing documents.

Mr. YUTZIS commended the Government of Viet Nam's clear desire for dialogue. Given that country's special circumstances, the Committee should agree to its specific request for rescheduling of the consideration of the periodic report and, in the meantime, provide it with advice in preparing that report.

Mr. ABOUL-NASR said that the particular circumstances of Viet Nam, as described by its representative, warranted postponement of consideration of its report. With regard to advice on how to proceed in preparing a report, he referred the representative of Viet Nam to the Committee's guidelines, which could be transmitted to the Government, together with previous reports of the Committee.

Mr. de GOUTTES suggested that, pending the rescheduled consideration of Viet Nam's report, to which the Committee clearly agreed, a preliminary exchange of views might be held on the basis of documents that were available to the Committee.

Mr. SONG Shuhua supported the proposal to postpone consideration of Viet Nam's report in view of recent and current developments in that country. He, too, drew attention to the Committee's guidelines and agreed to giving the delegation of Viet Nam some advice on the preparation of its report, but would not be in favour of a lengthy discussion, since a report would be forthcoming in 1993.

Mr. YUTZIS said that there appeared to be consensus on considering the periodic report in 1993. That being so, he drew the attention of the Vietnamese delegation to a fundamental principle, namely, that the very existence of the Committee largely depended on the seriousness with which States parties discharged the responsibilities to which they had subscribed on acceding to the Convention, including their reporting obligations. Viet Nam's periodic report was long overdue, and he trusted that it would now be submitted, as promised, in 1993.

The advisory services available within the Centre for Human Rights might be useful in helping the Government of Viet Nam with some of the procedural aspects of preparing its report.

Referring to the written statement submitted by the representative of Viet Nam concerning an incident which had occurred in Cambodia and involving a complaint against that country, he drew attention to article 11 of the Convention and to the possibility of submitting such a complaint under that article. If the Committee agreed, the representative of Viet Nam might convey that possibility to his Government, should the denunciation fall within the scope of that article.

Mr. van BOVEN commended the Government of Viet Nam on its willingness to engage in a dialogue and looked forward to receiving its written report as soon as possible. He suggested that the Committee might usefully hear the observations prepared by the country rapporteur, to which the representative of Viet Nam could respond as he saw fit, but refrain from drawing any conclusions and making final recommendations until it was able to consider the substantive, updated report.

Mr. SHAHI endorsed the comments made by Mr. Yutzis and agreed that consideration of the periodic report should be postponed. He supported the suggestion that the representative of Viet Nam might avail himself of the opportunity to seek guidance on reporting procedures from the Centre for Human Rights.

Mr. RECHETOV said that the procedure suggested by Mr. van Boven did not appear to allow for a full exchange of views within the Committee. He pointed out that there was nothing in the Convention to say that a report had to be submitted in writing, and there had been many cases in the past when the Committee had proceeded with a discussion of the situation in a given country even when the written report contained no factual information.

The CHAIRMAN said he took the prevailing view to be that, in the case now before the Committee, the Committee should not enter into a substantive debate in the absence of a written report, but that the comments prepared by the country rapporteur, adjusted to suit the changed circumstances, might provide useful background information.

Mr. de GOUTTES said that he had prepared a number of comments that might contribute to a preliminary exchange of views. First of all, the Committee should welcome the Government of Viet Nam's obvious willingness to renew its dialogue with the Committee by sending a delegation to explain its position. Even though no written report had been submitted, it was a laudable gesture at a time when the country was passing through a period of difficult transition and reconstruction.

Since becoming a party to the Convention in 1982, Viet Nam had submitted only one report to the Committee. He had consequently examined the situation of Viet Nam on the basis of other available information, both general information from non-governmental organizations and more specific information from other United Nations sources, in particular, Viet Nam's initial report to the Human Rights Committee on its implementation of the International Covenant on Civil and Political Rights, dated 7 July 1989.

On the basis of that information, the Committee should consider the reasons for Viet Nam's delay in submitting reports, recall its own assessment of the situation in Viet Nam when it had considered Viet Nam's previous report in 1983, and specify what it now expected of that country. With regard to its failure to submit reports, there were extenuating circumstances - successive wars, a precarious economic situation and internal problems, especially the

imperatives of reconstruction and renewal. The fact that Viet Nam had taken an initial step by submitting a report to the Human Rights Committee was encouraging. The Committee was sensitive to the difficulties of countries which did not have the administrative resources and facilities to fulfil their reporting obligations. He suggested that the Committee should offer technical assistance to the Government of Viet Nam for that purpose, with the help of the advisory services of the Centre for Human Rights.

Recapitulating the Committee's assessment of Viet Nam's initial report, he said that the initial report had failed to follow the guidelines and had been too general and too brief. Insufficient information had been given on the ethnic and demographic composition of the country. The Committee had raised the question of the exodus of refugees, noting that there must have been some compelling reason to force so many people from their homes. The Committee had also requested details of the latest constitutional provisions, noting some discrepancy between the 1946, 1959 and 1980 Constitutions.

With regard to the effective implementation of articles 2 to 7 of the Convention, the Committee had found the information provided to be inadequate, and had asked a series of questions and requested a number of explanations regarding, for instance, the Council of Nationalities responsible for ethnic affairs.

Viet Nam's report to the Human Rights Committee in 1989 and that Committee's conclusions on the subject contained more recent information of interest to the Committee, for instance, on ethnic minorities in Viet Nam and on the preparation of a new Constitution, as well as the information that the Convention on the Elimination of All Forms of Racial Discrimination could be incorporated into Viet Nam's legislation.

What, therefore, should now be expected of the Vietnamese Government? In general, it should be requested to furnish, as soon as possible, a comprehensive and updated second periodic report, submitted in accordance with the new guidelines on the format and content of reports adopted by the Committee in 1991. The report should consist of two parts, the first dealing with the framework in which the Convention was being implemented, namely the country's current social, economic, political and institutional situation, and the second with the actual implementation of each article of the Convention.

Certain issues would be of particular concern to the Committee, including socio-economic and demographic indicators and details concerning the major changes now under way.

It was often claimed that Viet Nam was fully committed to economic revival, transition to a market economy and the principle of opening up the country to the international community, but it appeared that the Communist authorities were concerned to maintain the predominance of the State apparatus and the Party. Admittedly, available information indicated that the new Constitution adopted on 15 April 1992 represented a significant step forward towards a State based on the rule of law, guaranteeing freedom of speech, association, the press and religious belief, without asserting the primacy of socialism. It also contained new provisions on the law of property and inheritance and free enterprise. In 1990, however, the Human Rights Committee had concluded that the Government stressed too systematically the sovereign rights of the State over the individual and that, while the war had undoubtedly been responsible for many of the difficulties experienced by Viet Nam in implementing the provisions of the Covenant on Civil and Political Rights, it should not be used to justify the restriction of certain rights and freedoms. The Government should provide explanations in that connection and details regarding the new Constitution, the implications of the general elections and the process of democratization.

The next report should indicate how the Convention had been incorporated in domestic legislation, whether it took precedence over domestic law and whether it could be invoked before the courts.

Turning to the specific articles of the Convention, and article 2 in particular, he said that the Vietnamese Government should respond to the concern expressed by the Human Rights Committee in 1990 regarding discrimination between north and south Vietnamese and any tensions or resentments to which it might have given rise. It should also indicate what steps had been taken to combat the traditional prejudices against minority ethnic groups regarded as having collaborated with France and the United States in opposing the Vietnamese liberation forces. It seemed that certain groups were particularly disadvantaged in material terms, especially as far as access to education was concerned.

Another source of concern was the fate of children of mixed background in Viet Nam. Such children were often regarded as pariahs, being abandoned by their irresponsible fathers and by their mothers, who were hesitant to acknowledge them. What steps was the Government taking on their behalf, particularly in the light of its ratification of the Convention on the Rights of the Child?

In the case of articles 4 and 6, he hoped that the next report would provide the texts of legislation penalizing racial or ethnic discrimination, and details of the outcome of cases arising from such laws.

In connection with article 5, he said that the Committee wished to receive information on people still interned in rehabilitation camps. Although many were known to have been released, some former soldiers and officials of the Saigon regime were evidently still being detained. What was being done to improve conditions in those camps and, more important, what steps were being taken to eliminate them? Questions also arose in connection with restrictions on movement and on the right to leave the country, and with the system of residence permits, which might constitute an infringement of the right to privacy.

The Committee also wished to be informed of the current status of refugees, and especially the "boat people". The representative of Viet Nam had stated in the Human Rights Committee in 1990 that voluntary repatriation from countries of first asylum would be in conditions of safety and dignity and without repressive or discriminatory measures. However, according to available information, the Vietnamese Government, in order to intensify its efforts to curtail "illegal departures", had concluded an agreement in October 1991 with the United Kingdom providing for forced repatriation of refugees in Hong Kong. In addition, the Committee wished to be informed of the fate of the many Vietnamese workers sent to the former Soviet Union and certain East European countries, where they had often lived in very difficult circumstances.

Noting that the new Constitution made no mention of the right not to be subjected to discrimination for reasons of political opinion, he inquired what compensation was available to victims of such discrimination. In the context of the right to freedom of religion, reports had been received of surveillance and harassment of religious leaders, both Buddhist and Catholic, and the Committee would wish to know whether officials responsible for such

persecution had been punished. There also seemed to be instances of discrimination in the system of registration, in that failure to register or exclusion could involve forfeiture of the right to housing, employment, health-care and the education of children.

With regard to the implementation of article 7 of the Convention, the Committee wished to know whether measures had been taken in Viet Nam to publish and promote awareness of the Convention, and more generally to disseminate information on combating racial prejudice and defending human rights. Were the Vietnamese authorities encouraging the activities of non-governmental organizations for the defence of human rights, and were they continuing their cooperation with Amnesty International and the International Committee of the Red Cross (ICRC)?

In conclusion, he welcomed the fact that a Vietnamese representative had been able to be present to resume the dialogue with the Committee. The questions raised showed the keen interest the Committee took in the process of democratization in Viet Nam.

Mr. NGUYEN LUONG (Viet Nam) thanked the Committee for the ideas put forward during the discussion, which would be duly conveyed to his Government and taken into account in his country's next report.

On the question of refugees, he wished to mention that he was involved in the repatriation process, and that a comprehensive action programme for refugees had been worked out in collaboration with ICRC. A representative of the United Nations High Commissioner for Refugees (UNHCR) was actively monitoring the repatriation in order to ensure that it was carried out in an orderly fashion and with due respect for human dignity. The problem was purely humanitarian in nature and should not be politicized. In regard to ethnic groups, he said that both the Government and the new Constitution stressed the need to promote the human resources of those groups through education and development.

Mr. Nguyen Luong (Viet Nam) withdrew.

The CHAIRMAN said the Committee seemed to be in agreement that consideration of the report of Viet Nam should be postponed until 1993, and that it should draw the Vietnamese Government's attention to the availability of the advisory services of the Centre for Human Rights. The Permanent Mission of Viet Nam would contact the Centre in order to ascertain what kind of assistance might be required.

Second, third and fourth periodic reports of Somalia (CERD/C/88/Add.6)

Mr. ABOUL-NASR, country rapporteur, said he understood a letter had been received from the Permanent Mission of Somalia requesting that, in view of the country's current situation, consideration of its overdue report should be postponed until the Committee's next session. The letter had stated that the Somali Government would submit the report to the Committee as soon as the situation normalized.

The CHAIRMAN pointed out that the Committee had decided not to accede to the request of Somalia, in view of the fact that it had not given any definite date for submission of the report.

Mr. ABOUL-NASR said that he had not been present at the meeting in question. In the past, however, the Committee had always granted requests for postponement. The reasons for the Somali request were sound, given the chaos that currently prevailed in the country. It was not clear to him what exactly the Committee could discuss and what recommendations it could make, since there was no government in control to which they could be addressed. Furthermore, the situation in the country was not directly relevant to the Committee's work. The people of Somalia constituted a homogeneous group, spoke the same language and were of the same religion. The war being waged in the country was not the result of tribal differences, but was a conflict between two members of the same family.

Mr. LAMPTEY said he was in favour of accepting the request for postponement. In the unsettled conditions, it was not possible for Somalia to submit a periodic report or to give a date for the submission of such a report. The Committee needed only to express its regret at the situation.

Mr. SHAHI agreed that it was impossible for Somalia to provide a date for the submission of its report, but regretted that the request for postponement had not been made to the Committee by a representative of the country in person.

Mr. GARVALOV said that the Committee needed to adopt a position of principle and discuss what recommendations it wished to include in its report.

Mr. WOLFRUM said that human rights were being violated in Somalia and the Committee therefore had a duty to discuss the situation and make recommendations. He suggested that the Committee should express its regret at events in Somalia and urge the Security Council to take further action.

Mr. BANTON agreed that even if firm conclusions could not be reached, the topic needed to be discussed, so that the Committee could establish whether any recommendations could be made. In view of the provisions of article 1, paragraph 1, of the Convention, which referred to discrimination based on descent, the conflict in Somalia was not completely irrelevant to the Committee's work.

Mr. de GOUTTES pointed out that it was not the first time that the Committee had had to deal with such a situation; there were precedents, for instance, Haiti. The discussion that had just taken place needed to be reflected in the Committee's report, which should state that the Committee was alarmed at the massacre of the civilian population in Somalia and condemned such inter-clan, inter-tribe conflicts. The ethnic element that he believed was involved in the conflict meant that Somalia was a relevant topic of discussion for the Committee.

Mr. FERRERO COSTA agreed that the Committee should consent to postpone consideration of Somalia's periodic report and should express its concern at the situation in the country, on which it needed to express an opinion, since there was an ethnic, even a tribal aspect to the conflict.

Mr. ABOUL-NASR suggested that the Committee's report should state that the Permanent Mission of Somalia had requested postponement of consideration of the country's report, that the Committee had accepted the request in view of the situation in Somalia, and that the Committee was concerned about the events taking place there.

Mr. LAMPTEY said that, under the Convention, the Committee was concerned with the fulfilment of the responsibilities of States. It was not its task to find a solution to conflicts between groups, ethnic or otherwise. Since there was no firm State authority in Somalia, he wondered who would be in a position to submit a report to the Committee. He accepted Mr. Aboul-Nasr's suggestion regarding the Committee's report.

Mr. SHAHI suggested that a small group of members should draw up recommendations and observations for consideration by the Committee at a later stage.

Mr. WOLFRUM supported that suggestion.

The CHAIRMAN proposed that Mr. Aboul-Nasr, Mr. Banton, Mr. Wolfrum and Mr. Ferrero Costa should cooperate in drafting a text.

He assumed that the request made by Somalia for consideration of its report to be postponed until the next session was accepted.

It was so agreed.

The meeting rose at 1 p.m.